

**SUPERIOR COURT
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN
JUDGE

**NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801
(302) 255-0669**

Submitted: May 22, 2006

Decided: May 31, 2006

STATE OF DELAWARE,

Plaintiff,

V.

JAMES FLOYD,

Defendant.

ID #: 0212002535

ORDER

Upon Defendant's Motion for Postconviction Relief - - *GRANTED*

After preliminarily reviewing Defendant's May 1, 2006 Motion for Postconviction Relief, the court, pursuant to Superior Court Criminal Rule 61(g)(2), called for a response from Defendant's trial attorney. The response was filed on May 22, 2006, as ordered.

I.

Basically, Defendant claims that he received ineffective assistance of counsel because Defendant's trial attorney did not tell Defendant about the deadline for filing a direct appeal, after he was convicted on November 15, 2005, and sentenced on February 3, 2006 for Assault First Degree, Attempted Robbery First Degree, and two counts of Possession of a Deadly Weapon During the Commission of a Felony, and Defendant received twenty-two years of mandatory time in prison.

Defendant's trial attorney believes that he told Defendant about the deadline. The attorney, however, assumes that because Defendant did not listen to the attorney's other advice, Defendant did not listen concerning the direct appeal. The attorney, however, has no paper trail concerning the advice he gave Defendant about the jurisdictional deadline for a direct appeal. That belief probably is furthered by the mental health issues surrounding Defendant.

Considering the underlying convictions' seriousness, the lengthy prison sentence imposed and Defendant's sketchy mental condition, Defendant's attorney, at the least, should have memorialized the advice he gave Defendant concerning the deadline for filing a direct appeal. Something to Defendant in writing would have been better.

Accordingly, on that basis, the trial attorney's representation on this point was ineffective. Moreover, considering all the factors mentioned above, failing to advise Defendant, in writing, about the deadline was prejudicial. The court also observes that Defendant filed his motion for postconviction relief less than two months after the deadline had expired. In other words, it appears that Defendant's confusion and his interest in a direct appeal are sincere.

II.

For the foregoing reasons, the court finds that Defendant was not assisted effectively by counsel in perfecting a direct appeal.¹ The court, however, has not considered any other claim concerning counsel's ineffectiveness. The remedy for the established violation is that Defendant SHALL have thirty (30) days from this order's date in which to file an amended motion for postconviction relief alleging all issues he would have raised on direct appeal. After preliminarily reviewing the amended motion, the court will decide whether further response from the State is necessary.

¹ *Middlebrook v. State*, 815 A.2d 739 (Del. 2003).

Because Defendant could not raise claims of ineffective assistance of counsel on direct appeal,² he shall not raise those claims in his amended motion. If he makes those claims, they will be ignored as premature. If Defendant asks his trial counsel for help, Mr. Goff is reappointed for that purpose.

IT IS ORDERED.

Judge

oc: Prothonotary
pc: Robert Goff, Esquire
Sean Lugg, Deputy Attorney General
James Floyd, HYCF

² *Duross v. State*, 494 A.2d 1265, 1267 (Del. 1985) (“Delaware law is well-settled that, on direct appeal, [the Supreme Court] will not hear any claims of ineffective assistance of counsel, which were not raised below.”).

tickle file for 30 days to see if direct appeal was done. 6/30/06